

To the Senate and Representatives of the United States, in Congress assembled. It is equally foreign from our wishes and intentions to criminate the motives of the national legislatures ... [Regarding the alien and sedition laws.] [Poughkeepsie

To the Senate and Representatives of the United States, in Congress assembled.

IT is equally foreign from our wishes and intentions to criminate the motives of the National Legislature. Composed, as we believe it to be, of honest men, we resist every rising suspicion that they could have either wickedly concerted, or wantonly pursued, any system of public policy, which necessarily led to committ the dignity, hazard the peace, or outrage the constitution of our common country: nor is it without the most unfeigned regret, that from this public testimony of reliance on the *integrity* of their conduct, we feel ourselves constrained to withhold an equal tribute of confidence in the *wisdom* of their measures. To our minds, under the purest and most deliberate exercise, they present, instead of objects of exultation or complacency, applause or approbation, a series of evils equally diffusive and calamitous, equally general and destructive—a *foreign war*—a *violated constitution* , and a *divided people*.

Under circumstances thus solemn to ourselves and awful to our country, silence would be dissimulation, and dissimulation would be guilt. When it becomes our duty to speak, it becomes your's to hear: Our language indeed shall be the language of freemen, but of freemen who know how to respect themselves; and its decorum, no less than its candour, shall entitle it to your attention.

It has been assumed by the government as the basis of the acts we now immediately complain of, that the republic of France has wantonly and vexatiously outraged our rights as a neutral and independent nation; and that she has, in two instances, repulsed every advance made by this country towards an adjustment of our differences, and a remuneration for our losses.

In this assumption we perceive a character but too common to every thing human; we perceive a portion of *truth* and a portion of *error*.

That France has outraged our rights, we readily admit and sensibly feel: but that she has constantly resisted accommodation, we as freely deny. The doubts which might hitherto have existed on this subject, are now swept away by a dispatch of at least equal authority with that which gave them birth. Mr. Gerry (of whose means of obtaining information, and of whose fidelity in reporting it, there neither has been, nor can be a doubt) instructs us to believe that he had "*full satisfaction that by the middle of June at farthest, the plan of a treaty would have been agreed upon, that a French minister would have been sent to America to complete it, that the minister (Mr. Talleyrand) appeared to him to be sincere*

and anxious to obtain a reconciliation; and that his views in general, as far as he could ascertain them, were liberal in regard to a treaty. "

If this anxiety abated, if this sincerity became doubtful, if these views became less liberal, to what is it to be ascribed: "*to the publication* , says Mr. Gerry, *of the envoy's dispatches of the 22 d of October , 1797.*"

But whatever effect the publication of these dispatches produced on the secretary, it produced none on the government. On the 10th June, 1798, we find the minister instructed to declare, "*That the French government, superior to all the personalities, to all the menaces of its enemies, perseveres in the intention of conciliating with sincerity, all the differences between the two republics.*" And on the 26th July, when Mr. Gerry left Paris, he left it persuaded, "*from the best information within his reach, that the Directory was desirous of a reconciliation.*"

Had this been mere profession, we might still have entertained some doubts of the fact of this conciliatory temper on the part of France. But when we find declarations thus open and explicit, accompanied by acts of substantial justice, we should betray a miserable jealousy, or criminal scepticism, were we to join the administration, in concluding that "*we can discover in the French government only empty professions of a desire to conciliate.*" So far from this we perceive in their acts an approach to accommodation, which, if met on our part with similar dispositions, might soon revive that cordiality and intercourse which ever ought to exist between two people, mutually professing an attachment to peace, and mutually acknowledging its wisdom and virtue.

It is therefore, with the deepest concern, that we find measures originating in mistake, and prosecuted in error, become the foundation of a system of *alarm* , of *suspicion* , of *tyranny* and of *expence* , which no state of things could justify, and scarcely any extenuate.

The parts of this system which most immediately engage our attention, and to which we are most desirous of directing your's, are the two laws, passed at your last session, usually denominated the *alien* and *sedition laws* , and an act providing for the *augmentation* of the *army*.

The first of these laws has all the characters which can make it obnoxious to a free people. It is cruel, unjust, unnecessary, , and unconstitutional. *Cruel and unjust* , as it subjects banishment and misery, a description of men, invited by hopes of prosperity, and promises of protection, and , without proof, without trial, and without guilt. *Unnecessary* , as no well founded apprehension can be entertained against a few unhappy fugitives, insulated by custom as by language, and previously subjected to the operation of those laws which have hitherto been deemed a sufficient restraint on public offenders of every description. *Impolitic* , as it must in its effects have a direct tendency

to prevent migrations from Europe hither: a tendency which, the acts of the British king, was regarded as so highly injurious to the interest of these states, as even to be made one of the causes of separation from the mother country. *Unconstitutional*, as it creates a species of punishment entirely *new* to our criminal code; whereas the constitution expressly forbids, "that cruel or *unusual* punishments shall be inflicted." *Unconstitutional*, as it commits to the President of the United States a power of judging and determining all cases arising under this law; whereas the constitution decrees that " *the judicial power* of the United States shall be vested in *courts*, to be established by Congress, the *judges* of which shall hold their offices *during good behaviour*. " And lastly, it is *unconstitutional*, as in all criminal prosecutions "the *accused* shall enjoy the right of a speedy and *public trial* by an *impartial jury*; shall be *informed* of the *nature* and *cause* of the *accusation*; shall be *confronted* with the *witnesses* against him; shall have *compulsory process* for obtaining *witnesses* in his *favour*; and shall have the *assistance* of for his *defense*," all which?ights an alien is deprived of by this law.

To the Sedition Law our objections are still stronger than to the alien law; because the abuses to which it is liable, are equally vicious in their character, and more general in their operation. The former assails the *few*, the latter attacks the *many*. The former is directed at *foreigners*; the latter is levelled at *ourselves*. The former tyrannizes over men, who in general have been born and bred under *oppression*. But it is the superlative wickedness of the latter, to convert freemen into slaves.

By this law the citizens of these states are prohibited, under the severest penalties, from expressing even their *disapprobation* of any part of the conduct of the President, or of either house of Congress, *through the medium of the press*; and whatever has in the smallest degree a tendency to bring either into *disrepute* is liable to be *punished* by *fine* and *imprisonment*. What stronger, what more precise definition of slavery can be given than this? That we can state no belief, that we can hazard no opinion, that has even a *tendency* to lessen the public estimation of a public servant.

The genius of this law pervades all its details, the crime is so defined, that we know not when we become guilty of it; for in the wide range of political opinion, how many things may be innocently said, how many even usefully suggested, which may be so construed as to incur these penalties? With a jury of partisans, warmed by zeal, and heated by contention, selected by an officer in the appointment of the President, and holding that appointment during the pleasure of the president, what opinion can be safe? To question the integrity, to doubt the wisdom, to assert or even to insinuate the ignorance of a chief magistrate, leads directly to ruin; and yet it will scarcely be deemed *impossible* that a president may be a profligate man or vicious magistrate; that he may be weak in intellect, or wanting in information; but, under the operation of this law, the most enlightened nation upon earth, must not only bear these imperfections with patience, they must also conceal them with

care; to hint them to a neighbour, exposes you to *fine* ; to breathe them to a brother subjects you to *imprisonment*.

A law thus alarming despotic; thus new to the creed, and offensive to the feelings of a free people, cannot be bottomed on a constitution we love and admire. In this conclusion we feel ourselves warranted no less by the *spirit* than the *letter* of that instrument.

The former is fully displayed in the following declaration, "To form a more perfect union, to establish justice, to ensure domestic tranquility, to provide for the common defence, to promote the general welfare, and to *secure the blessings of liberty to ourselves and posterity* , we, the people, do ordain and establish this constitution." Such were the great objects to be obtained by forming this instrument.

To accomplish these, it became necessary to enjoin certain duties, and to prohibit certain acts. Among these *prohibited acts* is the exercise of that very power we complain of, "*Congress shall make no law abridging the freedom of speech or of the press.*" A prohibition more express can scarcely be devised; and yet, extraordinary as it may appear, there is a portion of the national legislature who have contended that the law in question does not infringe this prohibition. The argument most relied upon in defence of their construction, may be thus concisely stated: "The constitution indeed prohibits the passing of any law which shall abridge the freedom of speech and of the press. But the law in question does not abridge the *freedom* of either, it but prevents their *licentiousness* ." The fact however is, that this defence turns, not on a logical distinction, not on a clear and well marked difference, but on a mere quibble. It supposes that liberty and licentiousness are two things totally different; whereas they are the same thing under different modifications and degrees. In like manner, fanaticism does not cease to be religion, though it may adhere to forms and profess , which the major part of mankind think ridiculous and extravagant.

In the same clause of the constitution in which it is declared, that congress shall not abridge the freedom of speech or of the press; they are also forbidden from prohibiting "the free exercise of religious opinions." As well may the advocates of this law assert, that the free exercise of religious opinions, does not mean "the free exercise," but such exercise only as shall in their opinions be consistent with morality and truth. Mahometanism would certainly come under the general description of "*religious opinion* ," and as such, the exercise of it would be tolerated by your constitution; but on the construction contended for with respect to the freedom of the press, it also might be *prohibited* , from a persuasion that it was founded in *falsehood* and led to *licentiousness*. But we forbear to combat arguments destitute, not only of the conclusiveness of truth, but even of the appearance of solidity.

The constitution declares that “ *Congress shall have power to raise and support armies ;*” but by the law passed at your last session, providing for the augmentation of the Standing Army, this power is delegated to the President of the United States, “who may cause to be enlisted, and call into actual service, a number of troops not exceeding thirty thousand,” and this power he is enabled to exercise “in the event of a declaration of war against the United States, or of actual invasion of their territory, or of imminent danger of such invasion *discovered* in his *opinion* to exist.” By these clauses he is authorized, not only to perform the *executive* trust of raising this corps, but the *legislative duty* also of deciding the necessity on which it is to be raised. Here is a manifest outrage of the constitution, in the commixture of *powers and duties* , which it every where declares, shall be kept *separate and distinct*.

By the same act, the President is authorized “to accept of any company of volunteers, who shall be liable to be called to do military duty at any time the President shall adjudge proper, within two years after?e shall accept the same, and *whose commissioned officers the President is hereby authorized to appoint.* ”

There are but two descriptions of troops known to our constitution, those of the standing army and those of the militia. It will scarcely be contended that this corps of volunteers make part of the first, they must then of course make part of the second, and this idea seems to be acknowledged in the amendatory act on this subject, which declares that “after their services are accepted, they shall be exempted from militia duty in *other corps.* ” If then they are a part, though a select part of the militia, the power given by this law to the President to *appoint* their *officers* , is a direct violation of that part of the constitution which *reserves* to the *states* respectively the appointment of *all militia officers*.

But to these arguments against the constitutionality of the law, we would add some others of different, but with us, equally conclusive authority.

The expence attending the regular establishment alone will be enormous, a corps of thirty thousand men with their staff, cloathing, arms, equipments, military and hospital stores, &c. &c. will, excluding waste and peculation, (two items equally heavy and unavoidable in army disbursements,) amount to fix millions of dollars per annum; all which might be saved, had the confidence of government reposed itself, where the wisdom of ages, and our own experience would have directed, we mean, in the *militia of the union*. History informs us, most emphatically, that the only convenient, safe and efficient defence of any free nation is militia. The language of our own experience is no less authoritative. It assures us that the battles of Lexington, Bunkers Hill, and Kings mountain were fought by *militia* : can we then have any reasonable doubt of the skill, courage or fidelity of this body, under any new exigence that awaits us!

But it is not on this ground alone that we think the late augmentation of the army unnecessary. The law creating it is predicated upon "a declaration of war against the United States, an actual invasion of their territory, or an imminent danger of such invasion discovered in the opinion of the President to exist."

That any declaration of war against the United States, or any actual invasion of their territory does exist, will not be pretended. It follows then that this law is put into operation from "some imminent danger of invasion discovered in the opinion of the President to exist." But from what quarter is such invasion to be expected? Is it from a nation, whose rulers declare themselves *anxious* for *reconciliation* ? A nation already exhausted by defeat? A nation, whose ports are all in a state of blockade? A nation, which the most confidential servant of the cabinet informs us, will not, in the short period of two additional years, have a single ship afloat upon the Ocean? A nation, wasting itself in barren conquests on the opposite side of the globe? A nation, on the eve of a new rupture with the great continental powers of Europe? A nation, in short, which can no longer attach her own subjects, nor controul her own dependencies? Is it from a people, thus *impotent* and *embarrassed* , that *we* have to *dread* an *invasion*? It is impossible; they are the fears of dotage, or circumspection of cowardice, and merit only pity or contempt.

The path of rectitude is open before you. Duty and dignity combine in pointing it out. *Revoke your alien law* , and let America long continue to be the *asylum* of the *wretched*. Repeal your *sedition act* , and seek not a *shelter* , necessary only to *wickedness* or *folly*. *Disband your army* , and *fear not* to *commit* the *defence* of your *country* to your *sons* and *brothers*.